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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,036	02/13/2002	John Joseph Mascavage III	020375-002100US	7402
20350	7590	03/09/2007	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			MAGUIRE, LINDSAY M	
TWO EMBARCADERO CENTER			ART UNIT	PAPER NUMBER
EIGHTH FLOOR			3692	
SAN FRANCISCO, CA 94111-3834				
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	03/09/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/076,036	MASCavage ET AL.
	Examiner Lindsay M. Maguire	Art Unit 3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 January 2007.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-22 and 24-27 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-22 and 24-27 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

This Final Office Action is in response to the application filed on February 13, 2002 and the amendments filed on January 31, 2007.

### ***Information Disclosure Statement***

The information disclosure statements filed March 26, 2002, May 23, 2005, and April 6, 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each Non-Patent Literature item cited. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-22 and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,699,528 (Hogan '528).

Hogan '528 discloses a method for facilitating payment between a buyer and a seller with an online money transfer performed over a wide area network, the method comprising steps of: receiving login information relevant to a vending site, wherein the login information is associated with the seller (305); automatically determining listings at the vending site associated with the seller (314, 385); generating a plurality of snippets of HTML code for the listings, wherein each snippet includes a link (Figure 3); automatically inserting one of the plurality of snippets into each of the listings, wherein activating the link points a web browser to a payment enabler that can transfer money from the buyer to the seller (Figure 4); determining the listing has changed (see Figure 4, the word "NONE" indicates that the listing has changed) changing a graphic indicated by the snippet, which is caused, at least in part, by the determining step (i.e. changing a monetary amount to the word "NONE"). Furthermore, Hogan '528 discloses that one of the plurality of snippets indicates a graphic associated with the snippet and information unique to the seller and a listing including the seller (i.e. the amount of money owed; see Figure 4); wherein the determining step comprises a step of concluding the listing has matured (i.e. bill has been paid or is due), whereby the purchaser is fixed (see Figures 4 and 8B); and the changing step comprises a step of modifying a button graphic displayed by the snippet to reflect the listing is available to the buyer (i.e. the button changes to say "due"). Hogan '528 further includes the steps of determining one of the plurality of listings has matured (i.e. been paid or is due), whereby the buyer is fixed; automatically determining the electronic address of the purchaser, and automatically sending a message to the electronic address of the purchaser (see Figure

6; 610); automatically sending a message to the electronic address of the purchaser (Figure 6); wherein the message is an e-mail message (610); further comprising a step of determining a purchase price from the vending site (see Figure 4); wherein the message includes a snippet that points to the payment enabler and includes information relating to a listing associated with the snippet (see Abstract, lines 8-13); further comprising a step of determining from the vending site the e-mail address of the buyer (Figure 6).

Hogan '528 also discloses a step of receiving selection of a button graphic for display by snippet (Figure 4); receiving authorization from the buyer to debit a money handler associated with the buyer (835); adding a credit in a stored value account of the seller as a result of the receiving authorization step (column 5, lines 1-15); further comprising a step of receiving a shipper selection (i.e. which bill is being paid) and a purchase price (i.e. how much of the bill is being paid); further comprising a step of receiving from the seller a message that is embedded in the plurality of snippets for display as part of each listing (i.e. the bill is ready to be paid; 817); further comprising a step of receiving login information relevant to a plurality of vending sites wherein the login information for each of the plurality of vending sites is associated with the seller (813).

***Response to Arguments***

Applicant's arguments filed January 31, 2007 have been fully considered but they are not persuasive.

Applicant's argument that the action is incomplete, are acknowledged. However, it is not incumbent upon the office to map out every detail of the claimed invention, since it is the responsibility of the applicant to read the cited references in their entirety. Also the listing of the claims which are rejected, in the heading of the rejection are considered to be sufficient notification to the applicant of which claims are discussed directly following it.

Furthermore, regarding applicant's arguments that "it appears that phrases were not even pulled from claims 14-22 and 24-27 despite their differences from claims 1-13" (page 2, paragraph 2 of "Remarks/Arguments"), the examiner is of another opinion. Specifically, claims 14-22 and 24-27 are considered to be substantially similar to claims 1-13, any argument to the contrary is an explicit argument for restriction of the case. If applicant disagrees with the examiner's assertion that claims 14-22 and 24-27 are substantially similar to claims 1-13 then applicant must state this clearly on the record.

In response to applicant's argument that Hogan '528 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant

was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the bill payment site of Hogan '528 performs a substantially similar function as applicant's vending site. Specifically, both contain a login, a plurality of snippets which contain links, a payment section, etc.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Regarding applicant's arguments that "Hogan relates to a bill payment system...to insertion of HTML snippets into listings at a vending site" (page 3, paragraph 2 of "Remarks/Arguments"), the examiner disagrees. A snippet of HTML is simply HTML whole or a piece of it, HTML is in all links because otherwise they would not function properly and then the link would be a 'dead link' i.e. it would not be active as a link. Also, there is nothing in the claims to breath life and breath into the term auction or vending. The invention is simply a site that allows for payment of goods by a user, which is no different then Hogan '528 which allows for a user to go into a website and pay bills. A payment for a good as in applicant's invention is essentially a bill that is due, and hence is substantially similar to the device of Hogan '528

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Maguire whose telephone number is 571-272-6039. The examiner can normally be reached on M-F: 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lindsay M. Maguire  
3/5/07

*James A. Kramer* 3/5/07  
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